C.S. 2502 (4)

**IN THE HIGH COURT OF JUDICATURE AT BILASPUR**

**(CHHATTISGARH)**

WRIT PETITION NO. 4288 OF 2004

PETITIONERS : M/s Utkal High Ways, Shree Vihar Colony, Tulsipur, Cuttack (Orissa) A Registered Partnership Firm holding Registration No. 171 of 1980. Through partners:

1. Narendra Singh Malhotra S/o Udham Singh Malhotra, Aged: 47 years,
2. Manjit Singh Malhotra S/o Udham Singh Malhotra, Aged: 47 years,
3. Mrs. Amrit Kaur Malhotra D/o Nand Singh, Aged: 68 years;
4. Mrs. Maninder Kaur Malhotra D/o Joda Singh, Aged 45 years;
5. Mrs. Jitender Kaur Malhotra D/o Jasbir Singh Jaggi, Aged: 36 years;

All R/o 26, Bairamji Town, Nagpur-13.

P.R. No. 3211/04
Presented by Shri Avinash Upadhyay
dated 21-9-04

Received on 21/9/04
Clerk to A. G. Bilaspur

NOTARY
Adv. MEERA AKHANI
AREA. RAVI NAGAR
Regd. No. 2013
GOVT. OF INDIA

**VERSUS**

RESPONDENTS : 1. State of Chhattisgarh through the Secretary to the Govt. of Chhattisgarh, Dept. of Water Resources, Raipur, Chhattisgarh.

A.F.R.

**HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH**

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- Versus -

State of Chhattisgarh & another

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**POST FOR ORDER ON 28th JANUARY, 2005**

Sd/-
L.C.BHADOO
Judge

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Present: -

Shri Utkarsh Verma, Advocate: For the petitioners.

Shri Sumesh Bajaj, Deputy Govt. Advocate: For the State/respondents No.1 & 2.

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**ORDER**

(Passed on 28th January, 2005)

**L.C. BHADOO, J.**

By this writ petition filed under Article 226 of the Constitution of India petitioner M/s Utkal Highways through its partners has questioned the propriety and correctness of the order dated 15-4-2004 whereby respondent No.2, the Executive Engineer has terminated the contract dated 11-3-2003 entered into between the Water Resources Department and the petitioner herein to execute the work of construction of Masonary Structures and earth work of main canal from 19 km to 26 km at the cost of Rs.128 lakhs, on the ground that the alleged action of respondent No.2 is illegal, arbitrary and bad in law and the same has been passed without affording reasonable opportunity to the petitioner in violation of principles of natural justice.

(2) Brief facts leading to filing of this writ petition are that Chief Engineer Mahanadi Godavari Basin, Raipur vide Annexure-P/2 invited tenders from the contractors who were registered with Engineer-in-Chief C.G. Water Resources Department Raipur in A-4 to A-5 Class, for construction of 14 Nos. Masonary Structures and earth work of main canal from 19 km to 26 km of Kharkhara Mohadipat phase-2 at the cost of 127 lacs. In response to that petitioner firm herein submitted its tender and after scrutiny, the same was accepted. In pursuance of that the petitioner's agreement dated 11-3-2003 was accepted and vide Annexure-P/4 dated 11-3-2003 the work order for the said work was given to the petitioner herein by respondent No.2 in which aforesaid work was to be executed within 11 months including 3 months mansoon period

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from 1st July to 30th September from the date of issuance of letter. The petitioner started work. However, on 8-5-2003, letter was issued by respondent No.2 to the petitioner stating that the work has not been executed in conformity with the clause-3.3 of the agreement. The earth work was found satisfactory, but for executing Pakka work the material was not collected at the site. It was further mentioned that on 15-4-2003 the petitioner's representative gave assurance to the Chief Engineer at the site at the time of site inspection that by 17-4-2003 the material for Pakka work will start coming at the site, but in spite of that the said work has not been done. Vide letter dated 17-11-2003 respondent No.2 again wrote a letter to the petitioner firm stating that under the agreement dated 11-3-2003 the work is to be completed within a period of 11 months. According to the schedule, which was given along with the agreement by now 85% work ought to have been completed, but so far only 44% work has been done. It was also mentioned in the notice that as per the agreement 'you were also required to submit report regarding progress of work, but that has not been submitted. Now, only 3 months' time is left whereas, 56% work is still to be completed.' Therefore, the petitioner was asked to submit its work schedule for completion of the remaining work within a period of 3 days. The petitioner was also asked to complete the work accordingly, otherwise action will be initiated as per clause-4.3.3 of the agreement and for which the petitioner firm will be responsible. It was further mentioned that this should be treated as last warning. However, in response to the above said notice, no progress was made by the petitioner, therefore, vide letter dated 9-12-2003 the petitioner was informed that in response to the letter dated 17-11-2003 the petitioner was required to submit its schedule of completion of the remaining work within 3 days through the S.D.O., but the same has not been submitted which shows that the petitioner's firm was not interested in completion of the work.

(3) In para-2 of the letter it was mentioned that in spite of the warning remaining work has not been started and neither any application has been moved in that connection, therefore, the contract is terminated under the Clause-4.3.3.3 and the remaining work will be executed at the risk and cost of the petitioner firm from any debitable agency. The petitioner was asked to remain present at the site on 17-12-2003 for measurement of the work done.

(4) As per the return field by respondents after receiving the letter dated 9-12-2003, the petitioner approached the office of respondent No.2 on 10-12-2003 with a letter intimating that the work shall be started from 10-12-2003 and promised to complete the remaining work within stipulated period. In the

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light of the petitioner's request respondent No.2 postponed the proposed action against him and he was allowed to continue the work and complete the same as promised. However, the petitioner never requested for extension of time, instead thereof he had promised to complete the work within the stipulated time. But the petitioner contrary to his promise failed to show the satisfactory progress within stipulated time i.e. up to 10-2-2004 and by that time the petitioner had completed only 46.53% of the work. The petitioner was required to move an application for extension of time as per the agreement's clause-4.3.5.1 within one month of cause of delay justifying the delay. The petitioner applied on 27-1-2004, whereas, the petitioner ought to have applied on 30th October, 2003. When the request of the petitioner dated 27-1-2004 was under consideration, the petitioner removed all machineries and construction materials from the site without giving any intimation to the department. Therefore, respondent No.2 issued a letter on 11-3-2004 to the petitioner contractor and directing him to bring all materials and equipments removed from the site and to start the work within a week. Copy of the same is Annexure-R/6. In response to the said letter the petitioner assured vide Annexure-R/7 dated 17-3-2004 that work will start from 20th March 2004, but even then the petitioner did not start the work till 12-4-2004. When the Executive Engineer, Durg, visited the site for a spot inspection, he found that the petitioner has not deployed men power or collected the material and machinery at the site which convinced the Executive Engineer that the petitioner had failed to demonstrate his intentions to execute the work and by making lame excuses for delay in the progress of the work, therefore, in order to safeguard the interest of the work, in exercise of powers under Clause-4.3.3.3 of the contract vide letter dated 15-4-2004 the contract was terminated for being awarded to other debitable agency at the risk and cost of the petitioner.

(5) Apart from other objections raised by learned counsel for respondents, it has also been mentioned in the return that since the matter relates to contractual matter, as such the writ petition under Article 226 of the Constitution of India is not maintainable.

(6) I have heard learned counsel for the parties.

(7) Shri Utkarsh Verma, learned counsel for the petitioner submitted that even before the completion of the term without giving any opportunity and show cause notice to the petitioner, the contract of the petitioner was terminated by respondent No.2 vide order dated 9-12-2003 even though still the time of the contract was up to 10-2-2004. He further submitted that the action of respondent No.2 was bad in law, being contrary to the principles of natural justice, as the

petitioner was not given any opportunity to show cause and hearing. Counsel further submitted that therefore the writ petition is maintainable. Learned counsel for the petitioner also argued that respondent No.2 ought to have invoked the provisions of clause 4.3.2 (A), allowed the petitioner to execute the work and directly invoking the provisions of clause 4.3.3.3 was not in consonance with the terms of the contract. He placed reliance in the matters of **Rajesh Sadanand Patil etc. v. The Additional Collector, Pune and others** reported in **AIR 2003 BOMBAY 304, Harbanslal Sahnia and another v. Indian Oil Corpn. Ltd. and others** reported in **AIR 2003 SUPREME COURT 2120, Bina Power Supply Co. Ltd., Bhopal and another v. State of Madhya Pradesh and others** reported in **AIR 2004 MADHYA PRADESH 68**, and **Ashok Kumar Dhingra and others v. Oriental Insurance Company Limited and others** reported in **AIR 2004 DELHI 161.**

(8) On the other hand, learned counsel for respondents submitted that as the matter relates to the contractual obligation, therefore, writ petition under Article 226 of the Constitution of India is not maintainable. He further submitted that as the parties were bound to act according to the contract agreement and the respondents took action as per the agreement's clauses, therefore, there was no question of violation of principles of natural justice. He placed reliance in the matters of **M/s. Radhakrishna Agarwal and others v. State of Bihar and others** reported in **AIR 1977 SUPREME COURT 1496, Food Corporation of India and others v. Jagannath Dutta and others** reported in **AIR 1993 SUPREME COURT 1494, State of U.P. and others v. Bridge & Roof Company (India) Ltd.** reported in **(1996) 6 SUPREME COURT CASES 22, Kerala State Electricity Board and another. V. Kurien E. Kalathil and others** reported in **(2000) 6 SUPREME COURT CASES 293, State of Bihar and others V. Jain Plastics and Chemicals Ltd.** reported in **(2002) 1 Supreme Court Cases 216** and **National Highways Authority of India v. Ganga Enterprises and another** reported in **(2003) 7 SUPREME COURT CASES 410.**

(9) In the light of the arguments advanced by learned counsel for the parties, I have perused the records and relevant clauses of the contract agreement entered into between the parties. Clause-4.3.2 (A) deals with compensation for delay which envisages that 'the time allowed for carrying out work as entered in the tenders shall be strictly observed by the contractor and shall be reckoned from the date on which the order of commence work is given to the contractor. The work shall throughout the stipulated period of the contract be proceeded with all due diligence (time being deemed to be essence of the

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contract part of the contractor) and the contractor shall pay as compensation an amount equal to 1% or such smaller amount as the Executive Engineer/Superintending Engineer may decide.' Clasue-4.3.2 (B) is the default clause which envisages that 'if the contractor shall neglect or fail to proceed with the work or with due diligence or he violates any of the provisions of the contract, the Executive Engineer shall give the Contractor a notice, identifying deficiencies in performance and demanding corrective action. The notice shall clearly state that it is given under provisions of this clause. After such notice, the contractor shall not remove from the site, any plant equipment and materials, from the date of notice, till the deficiencies have been corrected. If the Contractor fails to take satisfactory corrective action within fourteen days after receipt of the notice the Executive Engineer will terminate in whole or in part.' Clause-4.3.3 of the contract deals with a situation where the contractor becomes liable for levy of penalty and it envisages that '**in any case in which under any clause or clauses of this contract, the contractor shall have rendered himself liable** to pay compensation amounting to the whole of his security deposit or in the case of abandonment of the work owing to the serious illness or death of the Contractor or any other cause, Divisional Officer on behalf of the Governor of Chhattisgarh was vested with the power to adopt any one of the following course envisaged in clauses 4.3.3.1, 4.3.3.2 and 4.3.3.3. Clause 4.3.4.1 further envisages that even if no action is taken under clause 4.3.3 still the contractor was liable to pay the compensation.

(10) Therefore, a conjoint reading of clauses 4.3.2 (A) and 4.3.2 (B) read with clause 4.3.3 to 4.3.3.3 makes it clear that if in the first instance the contractor fails to execute the work within the stipulated time, then the Engineer was entitled to impose compensation on the contractor as per the provisions of clause 4.3.2 (A). Further if the contractor fails to execute the work with due diligence and he violates the provisions of contract, then the Executive Engineer was entitled even to terminate the contract after following the procedure as envisaged under clause 4.3.2 (B). In addition to the above, if the contractor commits breach of any of the contract clauses and thereby he rendered himself liable to pay compensation, the Executive Engineer of the respondent department was entitled to rescind the contract as per the provisions of clause 4.3.3.1 and as per the provisions of clause 4.3.3.2 the Executive Engineer of the respondent department was authorized to execute the work by employing the labour or departmental labour and was entitled to recover the amount of the work executed by the department. Clause 4.3.3.3 further envisages that the department can measure up the work executed by the contractor and also

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entitled to undertake the unexecuted work out of the hands of the contractor and to give it to another contractor to complete and in that process if any extra amount is incurred by the department, the department was entitled to recover that extra amount from the contractor. In this case, the respondent department has exercised the power under clause 4.3.3.3 and this action of the respondent department was in consonance with the terms of contract. Therefore, I do not find any substance in the arguments of learned counsel for the petitioner that in the first instance the Executive Engineer ought to have invoked provisions of clause 4.3.2 (A). Even the Executive Engineer without invoking the provisions of clauses 4.3.2 (A) and 4.3.2 (B) was entitled to invoke the provisions of clause 4.3.3 if the contractor rendered himself liable to pay compensation on account of breach of any clause of contract. Perusal of the above facts shows that the contractor himself created this situation by not executing the work within the stipulated time and thereby rendered himself liable for action under clause 4.3.3. The provisions of clauses 4.3.3, 4.3.3.1, 4.3.3.2 and 4.3.3.3 are independent of clauses 4.3.2 (A) & 4.3.2 (B) and the department was entitled to initiate action under any of clauses independently. In other words, it was not mandatory for the department to initiate action first under clause 4.3.2 (A) and only thereafter to initiate action under clause 4.3.3.3. In order to proceed under clause 4.3.3.3 the Engineer has to ensure in advance before proceeding under clause 4.3.3.3 that the contractor has rendered himself liable for compensation for breach of any clause of the contract.

(11) In the light of the above clauses of contract, if we look into the facts of the present case, it is an admitted position that work order was given to the petitioner on 11-3-2003 and the stipulated time for completion of the work was given 11 months including rainy season. The petitioner was also required to give work schedule according to which he was required to complete the work as per Annexure-4 and clause-1 of Annexure-4 envisages about construction programme of work as required as per clause 3.4 of the agreement. For the first time when the progress of the work was not according to time schedule, the Executive Engineer gave notice Anenxure-5 on 8-5-2003 in which it was specifically mentioned that work schedule of the construction programme has not been given by the petitioner. It was further mentioned that for Pakka construction material was not collected at the site, the representative of the petitioner firm gave assurance to the Chief Engineer that material shall be collected on the site by 17-4-2003 whereas, the same was not started collecting up to 17-4-2003. The petitioner was asked and directed to bring material on site for Pakka construction and to start work. Even thereafter, vide Annexure-R/2 dated 17-11-2003 the

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petitioner was again warned that by this time the petitioner ought to have completed 85% work, whereas, only 44% work was completed by the petitioner and 56% work was still pending to be completed and only 3 months' time was left, therefore, the petitioner was again asked to give schedule of construction within 3 days to complete the remaining work. He was also fore-warned that failing which action will be initiated under Clause-4.3.3 of the contract agreement. It was further mentioned that for that the petitioner shall be responsible. Copy of the same was also sent to the S.D.O. to ensure the compliance and progress of the work. When the petitioner failed to submit work schedule within 3 days and show progress of the work, notice dated 9-12-2003 was given to the petitioner showing his failure and also showing that his contract stands terminated as he had not shown much progress and response to the previous letters and even letter dated 17-11-2003. As per the return when on 10-12-2003 the petitioner's representative approached the Executive Engineer, on which again he was given time. But even then the petitioner failed to bring the material and machinery at the site to start the work, therefore, again on 11-3-2004 respondent No.2 asked the petitioner to bring material and equipments at the site. On 17-3-2004, the petitioner assured that he will start the work from 20th March 2004, but even up to 12-4-2004 the work could not start. Ultimately, the order impugned dated 15-4-2004 was passed by exercising the power under clause 4.3.3.3 of the contract mentioning therein that his contract stands cancelled under clause 4.3.3.3 and it has been decided to get the remaining work completed by a debitable agency at the risk and cost of the petitioner.

(12) Therefore, on facts, it cannot be said that proper opportunity was not given to the petitioner for showing cause for non-completion of the work in terms of contract agreement. The petitioner had not applied for extension of time, even at no point of time the petitioner had raised any point that the delay was on account of respondents. In the first instance, the petitioner was forewarned in the month of May, 2003 vide Annexure-5 and thereafter, again warning was given to the petitioner vide letter dated 17-11-2003 in clear terms showing his slow progress of the work and laxity by not completing the work. It was specifically mentioned that only 3 months' time was left and he had completed only 44% of the work, even then no response was shown by the petitioner. Again on 10-12-2003 on the request of the petitioner he was allowed some time to complete the work, but even then he failed to show any progress or bring material at the site, therefore, his contract was cancelled by the impugned order dated 15-4-2004. The agreement itself shows that the time was essence of the contract and the petitioner failed to execute the work in time without any

plausible explanation or reason. The petitioner was warned and the respondents had acted as per the contract agreement's clauses, therefore, the petitioner cannot raise any objection that opportunity was not given to him or principles of natural justice were violated. It is settled law that when the parties have entered into a contract and agreement, then they have to work according to their contract and actions are to be taken only in terms of the contract and in such cases principle of natural justice cannot be invoked. Therefore, on facts of the present case, the petitioners have no case on merit.

(13) The Hon'ble Apex Court in the matter of **K. L. Tripathi v. State Bank of India and others** reported in **AIR 1984 Supreme Court 273** has held that:

> ".....principles of natural justice has been violated or not has to be judged in the background of nature of charges, the nature of investigation conducted in the background of any statutory or relevant rules governing such enquiries. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any between the parties. It is true that all the actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether the principle of natural justice would be applicable to a particular situation or the question whether there has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. The rules of natural justice are flexible and cannot be put in any rigid formula."

Based on this principle, if we examine the facts of the present case, as has been mentioned above, here the petitioner was given the work to execute within 11 months and time was essence of the contract and the petitioner was required to construct the canal for the public purpose, as public money was involved and in spite of several notices and opportunity given to the petitioner, he failed to execute the work, and only thereafter, the order impugned was passed. Even on the facts, it can be said that the petitioner was given more liberal concession and even after termination of his contract vide order dated 9-12-2003, he was again given opportunity to complete the work, but he failed to execute the work.

(14) Now, as far as the question of maintainability of this writ petition is concerned, the High Court of Bombay in the matter of **Rajesh Sadanand Patil** (Supra), on which learned counsel for the petitioners placed reliance, observed

that "it is true that normally for enforcement of contractual rights and liabilities, parties have to approach a Civil Court." But looking to the facts of that case, the High Court after placing reliance on the judgments of the Hon'ble Apex Court in the matters of **Shrilekha Vidyarthi (AIR 1991 SC 537)**, **Dwarkadas Marfatia** and **Mahabir Auto Stores (AIR 1989 SC 1642)** and **(Para 28 of AIR 1991 SC 537)**, held that en-masse action taken by the respondents against several leaseholders was arbitrary and further held that on facts the principle that in the contractual matters the writ petition is not maintainable was not applicable. The facts of that case were that there was auction by the State Government for extraction of sand at the spot of Mouje Tanshi and thereafter the Tehsildar directed the petitioner to stop the extraction work at the site. In that situation, the High Court intervened and held that en-masse cancellation of the agreement was arbitrary. Therefore, on facts, the above judgment is of no help to the petitioner. Similarly, the judgment of Hon'ble Apex Court in the matter of **Harbanslal Sahnia** (Supra) is also of no help to the petitioner. In that case, the Hon'ble Apex Court held that:

> 'Principle of alternative remedy cannot be applied where question of enforcement of Fundamental Rights and failure to follow the principles of natural justice is attracted and if the dealership is terminated for an irrelevant and non-existent cause.'

In this case, as has been mentioned above, the question of principle of natural justice does not arise as the action was taken in conformity with the contract agreement entered into between the parties, therefore, parties were required to act under the agreement clause and respondents had acted in accordance with contract clauses.

Similarly, the judgment of M. P. High Court in the matter of **Bina Power Supply Co. Ltd.**, (Supra) is also of no help of the petitioner. On facts, that was a case of illegal forfeiture of security deposit and the Court held that:

> 'It is not the case of enforcement of purely contractual obligation. The Board is an instrumentality of the State and it has to act in a just, fair and reasonable manner.'

Whereas, in the present case, the matter pertains to purely contractual obligation.

(15) Similarly, the High Court of Delhi in the matter of **Ashok Kumar Dhingra** (Supra) has held that 'in view of the judgment of Hon'ble Apex Court in the matter of **Biman Krishna Bose {2001 (6) SCC 477}** with regard to the refusal

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to renewal of the Mediclaim Policy in its jurisdiction under Article 227 and in deference thereto, the High Court held that ' as far as maintainability of the writ petition to the extent of renewal of Mediclaim Policy is concerned, same is maintainable in view of **Biman Krishna Bose**' case. In **Biman Krishna Bose**'s case the Hon'ble Apex Court held that:

> "Even in an area of contractual relations, the State and its instrumentalities are enjoined with the obligation to act with fairness and in doing so, can take into consideration only the relevant materials. They must not take any irrelevant and extraneous consideration while arriving at a decision. Arbitrariness should not appear in their actions or decisions.'

In declining to renew the Mediclaim Policy on facts the Hon'ble Apex Court in **Biman Krishna Bose**'s case and High Court of Delhi in **Ashok Kumar Dhingra**'s case reached to the conclusion that the action of respondents Insurance Company was arbitrary in not renewing the Mediclaim Policy, whereas, on facts, in the present case, as mentioned above, the respondents all the time acted as per the agreement clauses and fore-warned the petitioner for his tardy and slow progress in the construction work. When the petitioner totally failed to fulfill his promise and execute the work, as a last resort, the action was taken when the Executive Engineer reached to the conclusion that the petitioner is not bonafide in his promise and he was not completing the work.

(16) On the other hand, as has been held by the Hon'ble Apex Court in the matter of **M/s. Radhakrishna Agarwal and others** (Supra) that:

> "State terminating contract of lease on breach of certain conditions of contract- Opportunity to show cause against cancellation, need not be given.

It was further held that 'article 14 of the Constitution of India cannot be invoked where the contract did not contain any statutory term or obligation.' It was further held that:

> ".....the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Art.14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract. The writ petition lies only in cases where the contract entered into between the person

> aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petition alleges a breach on the part of the State. But where the contract entered into between the state and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State, writ petition does not lie."

Similar view has been taken by the Hon'ble Apex Court in the matter of **Food Corporation of India and others** (Supra) and the Hon. Apex Court held that 'terms and conditions of contract permitting termination- Notice of termination cannot be set aside on ground of absence of policy decision- Question of contractual obligation cannot be gone into in writ jurisdiction.' In the matter of **State of U.P. and others** (Supra) the Hon'ble Apex Court has held that:

> 'The contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated and could not have been agitated, in a writ petition. Even there has been a reduction in the statutory liability on account of a change in law within the meaning of the terms of the contract is again not a matter to be agitated in the writ petition. That is again a matter relating to interpretation of a term of the contract and should be agitated before the arbitrator or the civil Court, as the case may be."

In the matter of **Kerala State Electricity Board and another** (Supra) the Hon'ble Apex Court has held that:

> "Writ Court not the ordinary forum- Contractual or commercial activities of a statutory body need not necessarily raise issues of public law- Disputes arising from such activities must be settled according to principles of law of contract and held that writ petition is not maintainable as the dispute relating to the interpretation and implementation of a clause in a contract."

In the matter of **State of Bihar and others** (Supra) the Hon'ble Apex Court has held that:

> "State had terminated contract with respondent company (for supply of PVC pipes and fittings) on account of delay, then purchased fittings at higher price and deducted difference from final bill of respondent, who blamed State for causing delay by not returning certain road permits and other documents, writ petition is not maintainable. Seriously disputed questions or rival claims arising out of breach of contract are required to be investigated and determined on basis of evidence led in a civil suit."

In the matter of **Ganga Enterprises and another** (Supra) the Hon'ble Apex Court has held that 'in the contractual matters disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India.'

(17) In view of the above decisions of the Hon'ble Apex Court, it is settled law that writ petition under Article 226 of the Constitution of India is not maintainable in cases of non-statutory, purely contractual matters and where rights and liabilities of the parties are governed by the terms of the contract, and the party complains about breach of such contract by the State. The contract between the parties is a contract in the realm of private law and not a statutory contract. The writ petition lies only where the State or its instrumentalities act in exercise of a statutory power under certain Act or Rules framed thereunder.

(18) In the result, the petition of the petitioner is devoid of merits, same is liable to be dismissed and it is accordingly dismissed. Consequently, stay granted by this Court on 12th January 2005 stands vacated. No costs.

**Sd/-**
**L.C.BHADOO**
**Judge**

Barve